***THE HONOURABLE Dr. JUSTICE G. YETHIRAJULU**

**+Writ Petition No.18402 of 2004**

**% Dated: 26-11-2004.**

**# V.S.S. Sastry**. … Petitioner

**$ The Ministry of Human Resource Development, Govt. of India, rep., by its Secretary, Department of Education & another.**

… Respondents

**!** Counsel for petitioner: Mr.S. Sharat Kumar

**^** Counsel for respondents: Mr.A. Rajasekhar Reddy, Standing Counsel for Central Government.

**< GIST:**

**>HEAD NOTE:**

**? Cases referred:**

1. 1975 (5) SLR 660
2. 1973 (2) ALR 137 (SC)
3. (1968) AC 997
4. (1971) 2 QB 175
5. AIR 1967 SC 1427
6. AIR 1991 SC 537
7. AIR 1978 MP 59
8. (1991) 2 SLR 779 (SC)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE DR JUSTICE G.YETHIRAJULU**

**WRIT PETITION NO: 18402 of 2004**

Between:

Prof.V.S.S.Sastry, s/o late V.Ramaswamy,
Centre for French and Francophone and Studies, Central Institute of English & Foreign Languages, Hyderabad-500 007.

**... PETITIONER**

AND

1 The Ministry of Human Resource Development, Govt. of India, rep., by its Secretary, Department of Education, Sastry Bhavan, New Delhi-110 001.
2 The Joint Secretary, Ministry of Human Resource Development, Department of Secondary & Higher Education, Language Division, Sastry Bhavan, New Delhi-110 001.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring the proceedings issued by the Languages Division of Ministry of Human Resource Development, Government of India, Department of Secondary & Higher Education in F.No.9-20/2001-D.III(L), dt.4th October, 2004 as wholly arbitrary, illegally and violative of Rule-23 of the Memorandum of Association and Rules of the Central Institute of English and Foreign Languages and Articles 14 and 16 of the Constitution of India and consequently direct the respondents to give approval to the recommendations made by the Board of Governors of the CIEFL for the appointment of the petitioner as the Vice Chancellor of Central Institute of English and Foreign Languages.

**Counsel for the Petitioner: MR.S.SHARAT KUMAR**

**Counsel for the Respondents: MR.A. RAJASHEKAR REDDY (SC FOR CG)**

**The Court at the admission stage made the following:**

**ORDER:**

**Prayer:**

1. The petitioner approached this Court through this writ petition seeking a writ of Mandamus to declare that the proceedings of the Languages Division, Ministry of Human Resource Development, Government of India, dated 04-10-2004 as arbitrary, illegal and violative of Rule 23 of the Memorandum of Association and Rules of the Central Institute of English and Foreign Languages, Hyderabad and to direct the respondents to approve the decision made by the Board of Governors for appointment of the petitioner as the Vice-Chancellor of CIEFL, Hyderabad.

**Contentions:**

2. The petitioner is working as a Professor in the Centre for French and Francophone and Studies, Central Institute of English and Foreign Languages (CIEFL), Hyderabad. The CIEFL is a Society registered under the Public Societies Act. It is an instrumentality of the State under Article 12 of the Constitution of India. The post of the Vice Chancellor of the said Institute, which is recognized as a deemed University, fell vacant on 05-03-2002. The said post has to be filled up by following the procedure prescribed under Rule 23 of the Memorandum of Association and Rules of CIEFL. The Board of Governors constituted a Selection Committee for preparing a panel for the post of the Vice Chancellor; the Selection Committee notified the vacancy to various Universities. Wide publicity was given to the availability to the vacancy. The University received nominations from different Universities. After thorough scrutiny of the entitlement of different persons, the Selection Committee recommended a panel of three candidates to be placed before the CIEFL Board for its decision, as per the provisions of the CIEFL Memorandum of Association and Rules. The Board at its meeting on 25-10-2002 by a consensus resolution recommended the name of the petitioner to the Ministry of Human Resource Development, Government of India, for appointing as the Vice-Chancellor. The Joint Secretary (Languages), Ministry of Human Resource Development, Government of India, was part of the selection

process.

3. The Joint Secretary (Languages) has got an axe to grind in the entire issue and she has been trying to sabotage the selection of the petitioner through back door methods. She took it as a matter of prejudice to somehow stall or nullify the decision of the Board of Governors. At the instance of the Joint Secretary (Languages), the process for selection for the post is directed to be initiated afresh by advertising the post. The institute requires an amount of free fair hand in dealing wit its administrative matters. Since the matter was pending with the Government from 2002, the petitioner filed W.P.No.17402 of 2004 on the file of this Court questioning the validity of the proceedings of 03-09-2004. The said writ petition was admitted and interim direction was also given to the respondents not to take any further steps in pursuance of the proceedings dated 03-09-2004 pending disposal of the writ petition. The respondents hatched criminal strategy to over reach this Court's order and accordingly issued withdrawal proceedings in order to get over the order of the Court in the earlier writ petition. The impugned proceedings dated 04-10-2004 are therefore liable to be quashed.

4. The respondents filed a counter-affidavit with the following averments in brief:

5. As per Rule 23 of the Memorandum of Association, the Board of Governors of the Institute with the approval of the Central Government shall make the appointment of Vice-Chancellor. The Selection Committee will recommend to the Board a panel of three names considered suitable for the post, if the Board does not approve any of the persons included in the panel, it may call for afresh panel. When once the Board was given the panel of names, the Rules do not contemplate the role of the Board, except calling for a fresh panel in the event of not approving any of the persons included in the panel. The post of the Vice-Chancellor fell vacant on 05-03-2002. The Board of Governors constituted a Selection Committee under the Chairmanship of the then Union Minister of State (HRD) Smt.Rita Varma. The Selection Committee recommended a panel

of three names to the Board of Governors. The Board decided to appoint Professor V.S.S. Sastry as the Vice Chancellor and requested the Central Government to convey the approval of the Government of India as per Rule 23 of the Memorandum of the Association of the Institute. In the mean while, the guidelines issued by the University Grants Commission regarding the appointment of the Vice-Chancellor in deemed Universities came to the notice of the said department. The Department of Legal Affairs opined that the Memorandum of Association of the Institute shall have to be followed. The proposal was sent to the then Union Minister of Human Resource Development who approved the name of Professor Sastry. The then Union Minister of Human Resource Development approved the name of Professor Sastry and the proposal was sent to Department of Personal Training for seeking approval of ACC (Appointments Committee of Cabinet). Few queries were raised by the Department of Personnel and Training, which require clarification by the Department. The Department of Personnel and Training (DOPT) asked to obtain the concurrence of the Government for expenditure for the revival of the post, which falls within the category of deemed abolished posts in terms of Department and Expenditure (OM), dated 03-05-1993. It was clarified by the HRD Department that the instructions of the Department of Expenditure regarding filling of vacant post are intended to apply for teaching posts, since CIEFL is an institution founded by the University Grants Commission. In the mean while, there was change of Government at the Centre and DOPT returned all the proposals pending for the approval of the ACC to obtain the approval of the present Minister in-charge, including the proposal relating to the petitioner. Through the guidelines dated 05-12-2003 DOPT reiterated the guidelines dated 25-10-1994. According to those guidelines, the appointments in the Governments are to be made on the basis of open advertisements, the Constitution of a Search Committee cannot be a substitute for advertisement of posts and its role is only to supplement the recruitment effort through advertisement. On a reference received from CIEFL, the matter was re-examined on

re-assessing in the various rule options. Ultimately, it was decided on 28-09-2004 to withdraw the letter of the department dated 02-09-2004 and to advertise the post. Accordingly, on 29-09-2004, CIEFL was informed regarding the withdrawal of the letter dated 03-09-2004.

6. As per Rule 23 of the Memorandum of Association of the Institute, the appointment of the Vice-Chancellor shall be made by the Board with the approval of the Central Government. If the Central Government does not approve the same, the Board can be directed to restart the selection process. As the Board sent only one name and not panel of three names for Government's approval, the Government may or may not approve the selection. Accordingly, CIEFL was directed to restart the selection procedure afresh and to send a panel of names for approval of the Government. The Minutes of the Board did not reflect the views of the Ministry's representative that it should give preference for the names appearing in the panel for the approval of the Central Government. The Minutes are expected to reflect all the views expressed by the members, even if they are not accepted. The allegation that Smt.Bela Banerjee, Joint Secretary (Language) has prejudice against the petitioner is not correct. The decision of the Central Government directing the Board of Governors for starting fresh selection process of the Vice-Chancellor is reasonable and legally justified. The petitioner is not legally entitled to get any of the reliefs prayed for. The writ petition is therefore liable to be dismissed.

7. In the reply affidavit, the petitioner countered the averments of the counter-affidavit and the contents are briefly as follows:

8. The procedure prescribed under Rule 23 of the Memorandum of Association and Rules of the CIEFL are not in dispute. The interpretation that the selection made by committee of which the Hon'ble Minister herself was the Chairperson is to be proved by the Minister once again would result in a ridiculous situation and it would be subverting the spirit underlying the Rule 23-A. After issuing of revised guidelines only, the

Selection Committee was constituted. The proposal sent by the Board of Governors was sent to the then Union Minister for Human Resource Development and the name of the petitioner was approved by him. The Joint Secretary (Languages) appeared to have prevailed over the DOPT to raise the issue with regard to the applicability of its guidelines. She did not explain under what circumstances, the letter dated 03-09-2004 was issued and what were the compelling reasons for withdrawal of the same by another letter dated 29-09-2004. If the contention of the respondent that the Board of Governors ought to have sent three names to the Ministry of HRD for approval is accepted, then there is no need for a Board of Governors after the decision of the Selection Committee. In order to lessen the burden of the Ministry of HRD, the Board of Governors have been clothed with the powers to shortlist from among the three names suggested by the Selection Committee for sending one name to the Ministry for formal approval. Except stating that the change of Government had made all the difference, there is no other reason assigned by the respondents for the withdrawal of the earlier proceedings. The impugned order of the respondents is therefore liable to be set aside.

**Point for consideration:**

9. In the light of the contentions raised by both parties, the point for consideration is:

*Whether the proceedings of the first respondent dt.04.10.2004 ordering fresh selection process is arbitrary, illegal and violative of Rule 23 of the Memorandum of Association and rules of the Central Institute of English and Foreign Languages, Hyderabad and whether the petitioner is entitled to seek a direction to the Government of India to pass appropriate orders supported by reasons on the recommendation of the Board of Governors for appointment of the petitioner as the Vice Chancellor of the Institute?*

10. Rule 23 of the Memorandum of Association of the Institute speaks about the appointment of the Vice-Chancellor. It reads as follows:

**23. Vice Chancellor:**

a. The appointment of the Vice Chancellor shall be made by the Board with the approval of the Central Government.

b. For this purpose the Board shall constitute a Selection Committee consisting of;

iii. Chairman

i. A representative of the Central Government

ii. A member of the Board nominated by it, and

iii. Two persons not connected with the institute nominated by the Board.

The Selection Committee will recommend to the Board a panel of three names considered suitable for the post.

If the Board does not approve of any of the persons included in the panel, the Board may call for a fresh panel.

c. xxx

**Facts:**

11. The post of the Vice Chancellor had fallen vacant on 05.03.2002. About three months prior to the said date, the process for selection of a new Vice Chancellor commenced in the Ministry of Human Resource Development, Government of India. The first note was circulated on 23.08.2001. The meeting of the Board was held on 15.12.2001. The Board constituted a Selection Committee under the Chairmanship of the Chairman of the Institute, including the representative of the Central Government. The Minutes of the Board meeting have been received by the Central Government for nomination of the representative of the Government. Smt. Bela Banerjee, Joint Secretary (Languages) was nominated to represent the Department. The other members of the Selection Committee were Prof. Prabhakar Jha, Prof. Meenakshi Mukharjee, Prof. N.S.Prabhu, under the Chairmanship of the Chairman, CIEFL. Under the instructions of the said Selection Committee, nominations were invited from candidates of leading Universities in the country, who are eminent professors/foreign language teaching research with sufficient administrative experience to discharge the duties and responsibilities attached to the post of Vice Chancellor. In response to the said invitation, 17 nominations were received from various sources. The Selection Committee at its meeting held on 10.10.2002 under the Chairmanship of MOS (HRD) considered the bio-data of all 17 candidates

and after detailed discussions recommended a panel of the following three names:

1) Prof. Anvita Abbi, Professor of Jawaharlal Nehru University, New Delhi;

2) Prof. Madanagobalane, Professor of French in the University of Madras;

3) Prof.V.V.S. Sastry, Professor in CIEFL, Hyderabad.

12. The Board at its meeting held on 25.10.2002, considered the panel recommended by the Selection Committee and decided to appoint the petitioner as the next Vice Chancellor of the Institute for a period of five years or until he attains the age of 65 years, whichever is earlier, as provided in Bye-law No.22 of the Institute and the decision of the Board was forwarded to the Government of India for approval, as required under Rule 23 of the Memorandum of Association of the Institute. The decision of the majority members of the Board was to appoint the petitioner as the Vice Chancellor. The CIEFL certified that there is nothing adverse against the petitioner and his integrity is unquestionable. It was also certified that there was no vigilance case either pending or contemplated against the petitioner.

**Career of the File:**

13. While putting up a note to the Education Secretary and Human Resource Ministry, the Joint Secretary (Languages), who was one of the members of the Selection Committee mentioned that since the Board has not rejected the panel of three names given by the Selection Committee, as per Rule 23 of the Memorandum of Association, the Government may take a decision on the recommendations of the selection for appointment of Vice Chancellor. The concerned Minister directed to obtain the opinion of the Ministry of Law. In pursuance of the said direction, the Ministry of Law and Justice, Department of Legal Affairs was requested to advise whether there is any legal bar in approving the proposal to appoint the petitioner as Vice Chancellor. The Department of Legal Affairs of the Ministry of Law and Justice gave the following opinion:

The Board is not solely competent to appoint the vice chancellor in view of Rule 23 of the Memorandum of Association and Rules of the Society, the competent authority for appointment of Vice chancellor is the board as well as the Central Government but neither of them is independently competent.

14. After obtaining the said opinion, the Joint Secretary (Languages) submitted a note and the last para of the said note reads as follows:

In view of the legal opinion by Department of Law and the fact that CIEFL board as forwarded only one name, the Government may consider rejecting the recommendation and direct the board of CIEFL to amend the MOA as per the UGCs directives for deemed to be Universities. The process of selection of Vice Chancellor can be restarted thereafter.

15. After discussion with the Human Resource Ministry, the Joint Secretary (Languages) submitted a further note dated 17.12.2003, which reads as follows:

The Board in its meeting held on 25.10.2002, has minuted that: 'as per the mandate given to the Board of CIEFL, as per Rule 23 of MOA and Rules of the Institute, it has decided to appoint Prof.VSS Sastry as Vice Chancellor, CIEFL'.

Since, as per the legal opinion, the competent authority for appointment of Vice Chancellor is Board as well as the Central Government, the matter may be referred back to the CIEFL Board to send its recommendation for approval of the Central Government.

16. On the said note the following order was passed on 02.01.2004:

HRM has approved the appointment of Prof.VVS Sastry as vice chancellor, CIEFL. He has also directed that the legal opinion received may be conveyed to the CIEFL board for strict compliance in future.

17. On 12-1-2004 the Desk Officer (Languages) made another endorsement to the following effect:

Hon'ble HRM has approved the proposal to appoint Prof.VSS Sastry as Vice chancellor, CIEFL. The proposal will require approval of ACC (Appointments

Committee of Cabinet). Accordingly, the proposal has been prepared in a prescribed proforma along with a note to the ACC.

18. When the matter was placed before ACC, the committee sought for certain clarifications. The Desk Officer gave the clarifications. The following is the most important query raised by the committee:

Whether the post was advertised. If so the copy thereof may be provided. If not the basis on which names were considered by the Selection Committee may be clarified.

19. The following is the reply given:

In accordance with Rule 23 of MOA and Rules of the Institute, the appointment of the Vice Chancellor shall be made by the Board with the approval of the Central Government. For this purpose the board shall constitute a selection committee consisting of Chairman, a representative of the Central Government, a member of the Board nominated by it and two persons not connected with the Institute, nominated by the board. The Selection Committee will recommend to the board a panel of three names considered suitable for the post. The selection process of the post of Vice Chancellor was carried out as per the provision of the MOA of the institute and the post was not advertised.

20. Subsequently, when a doubt was entertained whether the latest guidelines of UGC are applicable to this case, it was clarified by the Ministry of Law that the guidelines issued by UGC do not apply. Subsequently, when the file was circulated for the approval of ACC, a query was raised whether the ACC guidelines have been followed at the time of formation of the Search Committee. The Joint Secretary (Languages) submitted a reply through a note dated 18.06.2004, which reads as follows:

This is regarding selection for the post of vice chancellor, CIEFL. It is clear from the note on p.67-68/N that the procedure followed in farming the Selection Committee for the appointment of Vice Chancellor, CIEFL has been done strictly as per Rule 23 of MOA of CIEFL. The ACC guidelines contained in para 3.2 (vii) issued

on 25.10.1994, clearly state that where rules themselves prescribe search-cum-Selection Committee, it should be ensured that the composition is strictly as per rules.

The only departure from the ACC rules appears to be that the post of Vice Chancellor, CIEFL was not advertised. However, the names for the VC's post were called for from large number of institutions and the Selection Committee considered the 17 applications received and recommended three names in alphabetical order (p.65/N, para 6). CIEFL Board decided on the name of Prof. VVS Shastri for approval of the Government of India. In view of the above it may be considered whether the post may be re-advertised or the present selection process be proceeded with for ACC approval.

21. After going through the reply, the Human Resource Ministry passed the following order:

Since the post was not advertised, we should cancel the selection and re-advertise.

22. Subsequently, a note was circulated on 09.09.2004 requesting the Ministry to reconsider the decision to cancel the selection process and to re-advertise the post. In the said note the following are the grounds mentioned for reconsideration:

a) Advertising the post is advised on the assumption that the Search Committee can be supplied with as many applications as possible for its consideration. The Section Committee, which was constituted, wrote to as many VCs in the country as possible requesting them to suggest names of eminent academicians for appointment as VC, CIEFL. The Selection Committee looked into all the suggestions/recommendations and recommended to the Board of Governors a panel of three names considered suitable for the post.

b) Advertising the post of VC, CIEFL would mean a departure from the established procedure in which also the representatives of the Ministry have been taking part till now. None of the deemed Universities or Central Universities advertise the post of VC, since the post neither comes under the purview of UPSC nor is the post to head a scientific/technical institute/institutions. The UGC is also aware of this procedure at all deemed and Central Universities."

Para.8:

The present selection procedure for the post of VC, CIEFL appears to be in order and the decision of the Ministry to reinitiate the selection process by advertising the post merits reconsideration due to the following:-

i. The present selection process for the post of VC, CIEFL is as per the provisions of its MOA.

ii. Department of Legal Affairs has opined that the MOA rules of the institute have to be followed.

iii. Higher Education Bureau of this Ministry have indicated that MOA rules are required to be followed until the same are amended…

iv. DOPT has seen this proposal in detail and has not objected to the proposal on the ground that the post was not advertised.

23. The Ministry was accordingly requested for approval of the selection procedure followed by CIEFL for appointment of the Vice Chancellor.

24. In a subsequent note dated 21.09.2004 signed by the Joint Secretary (Languages), the following was mentioned:

"Since MOA of CIEFL clearly spells out the procedure of selection of Vice Chancellor and also the composition of the Selection Committee, the procedure followed is, therefore, correct. The post of Vice Chancellors are normally not advertised and it is for the Search-cum-Selection Committee to have wide range of discussions, invite names from the experts, institutions etc., and find suitable person for the post.

The selection of the Vice Chancellor, CIEFL was finalized by the Selection Committee which gave three names in alphabetical order. The CIEFL Board selected one name, Prof.V.V.S.Shastri, and forwarded the same to the Government for approval. After the Government approval, the name of Prof.Shastri was sent to the ACC for approval during the previous Government. However, the case was returned by DoP&T for the approval of the new Government before the case is put up for the ACC approval.

As per rule 23 of the MoA (Flag'C')'**the appointment of the Vice Chancellor shall be made by the Board with the approval of the Central Government'.** In other words, if the Central Government does not approve the name, the Board of CIEFL can be directed to restart the process. As the Board sent only one name and not the panel of three names for Government approval, the Government mayor may not approve the recommendation.

In view of the above, if the Central Government does not approve the recommendation of the CIEFL Board, the Board can be directed by the Government to restart the selection procedure afresh and send panel of names for approval of the Government."

25. After going through the said note, the following order was passed by the Additional Secretary, Secondary and Higher Education on 28.09.2004 duly approved by HRM:

> "On page 69/N we had obtained orders of HRM rejecting the recommendation of the then Selection Committee. We had mentioned that since the post was not advertised we should cancel the selection. However, on reassessing the case, we find that the Government is free to reject the recommendation of the board and it should be presumed that we have rejected the selection on this basis and not because of not advertising the post. We may start the selection process afresh."

26. This is the order on the basis of which the impugned order dated 04.10.2004 was passed by the Government of India instead of Human Resource Ministry.

**Submissions:**

27. The above sequence of orders indicate that the rejection was not on the ground of non-advertisement of the post and it was not approved by Human Rights Ministry on the ground that the Government is free to reject the recommendation of the Board.

28. The learned counsel for the petitioner submitted that the process of selection commenced during the period of the previous Government and the order dated 28.09.2004 was passed after the new Government came into force. Simply because there is change in the Government, the concerned Ministry is not expected to reject the recommendation of the Board on the ground that it has power to reject without assigning any reasons. Therefore, the impugned order is liable to be set aside.

29. The order dated 28.09.2004 was passed by the Human Rights Ministry and it was not placed before the Appointments Committee of Cabinet (ACC), which is the body that has to approve the appointment made by the Board of the Society.

30. The learned Standing Counsel for the Central Government submitted that as per Rule 23 of the Memorandum of Association, the

Board is expected to send three names, instead it sent only one name of the petitioner for approval. He further submitted that the recommendation made by the Board was not accepted on account of various reasons, which the Government of India need not assign, and the action of the Government in not accepting the recommendation made by the Board cannot be questioned through the writ proceedings.

**Observations:**

31. The Government did not point out any procedural irregularity or violation of any norm prescribed under the relevant rules. If the Government has unfettered powers to do as it likes, there is no need for framing the rules or following a prescribed procedure in this type of matters. The entire exercise done by the Selection Committee and the Board cannot be treated as a futile exercise by utilizing the services of experts from various parts of the country giving them an impression that their opinion would be given due weight and regard. Whenever an appointing authority makes a recommendation, it shall not be disturbed unless there is any procedural irregularity or illegality in making such appointment. If there are sufficient reasons for rejecting the recommendation made by the Board like choosing a less meritorious candidate or a candidate with any stigma or punishments and if such recommendation is not made with due diligence and care, certainly the Government has every right to interfere in such matters and issue directions either to correct such mistakes or to recommend the names of suitable candidates. The Government is not the appointing authority. As per Rule 23, the Board is the appointing authority and the appointment order will be given only after the approval of such appointment by the Government.

32. The institute is an educational institution spreading knowledge and imparting training in specialized courses for the students coming from all over the globe. It is not a political organization or an organization functioning to meet the political ends. The post of the Vice Chancellor is a respectable and responsible post of such institution. Therefore, in making

selection of a candidate for such important post, it shall be conveyed to everybody that every care has been taken to maintain transparency and to identify the best among the applicants. After a lot of exercise made by the Selection Committee, out of the 17 candidates, three names were recommended. If it is the intention of the framers of the rules that the Board should also recommend three names to the Government for approval of one candidate among the three candidates, it amounts to misinterpretation of Rule 23. When the rule mandates that the Board shall be the appointing authority, there shall not be any scope for giving a different meaning to such expression and the Board, which is the appointing authority, cannot be brought down to the level of the recommending authority. Whenever there is recommendation by such a high level body, due weight has to be given for such recommendation, except under exceptional and compelling circumstances. In the normal circumstances, the appointment has to be approved without interference. If there are any extraordinary circumstances compelling the Government to come to a different opinion, it has to assign the reasons that made the Government not to accept the appointment made by the Board of the Institute. The delay of about three years in clearing the appointment of a Vice Chancellor gives scope for people to think that the Government is not acting in an un-biased manner. Keeping an institution of higher learning for years together without a regular head by standing on technicalities leads to the disruption in the administration and fall of standards. Whenever there is recommendation, the Government is expected to expedite such matters by clearing such files on priority basis. The order of the Government in not approving the recommendation of the Board and in passing the order of rejection without assigning any reasons, and directing the institute to start fresh process of appointment is leading to a conclusion that there is no fairness on the part of the Government in passing the orders and it is an arbitrary action much detrimental to the interest of the institute leading to delay of many more years in reaching finality in the matter.

**Legal Position:**

33. The learned counsel for the petitioner brought to the notice of this Court a judgment of Punjab and Haryana High Court in **Girish Arora and others v. State of Haryana** wherein the Punjab and Haryana High Court while dealing with an appointment made by the Public Service Commission held as follows:

> It is absolutely imperative that men possessing high degree of caliber, competence and integrity are appointed to occupy these important offices. It is therefore, the constitutional duty of the State to ensure that the functioning of the Public Service Commission is not tampered by bureaucratic and political interference and the Commission is left free to select the best talents for public services. The argument that the decision of the Government without recording any reasons is immuned from judicial scrutiny is wholly unacceptable. Acceptance of such an argument would amount to recognition of the theory that absolute discretion vests with the Government to approve or not to approve the recommendations of the commission without recording any reasons. This is clearly incompatible with the extended meaning given to Arts.14 and 16 of the Constitution which require that every state action must be free from arbitrariness, must be fair and in public interests and further that if the action of the state is bereft of reasons then it is liable to be nullified on the ground of arbitrariness.

34. The Punjab & Haryana High Court gave the above judgment on hearing the contention that the Government is possessed with absolute power not to give appointment to the selected candidate and the petitioners have no right to question the decision of the Government.

35. In **State of Haryana v. Subash Chander Marwaha** the Supreme Court observed that it is the obligation of the Government to act fairly. The whole exercise of selection cannot be reduced to a farce. Having sent a requisition to the commission to select a particular number of candidates for a particular category, in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government, the Government cannot quietly and without good and valid reasons nullify the whole exercise and

tell the candidates when they complain that they have no legal right to appointment. The Government cannot adopt such a stand without any justification.

36. The theory of absolute discretion has been negatived by the jurists as well as by the Courts. The traditional view that the executive is not answerable where its executive function is attributable to prerogative power has long been discarded. Prof. H.W.R.Wade in his book on "Administrative Law" 6th Edition, distinguished between powers of public authorities and those of private persons in the following words:

> … The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely – that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms.

25. Prof. Wade went on to say:

> ... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.
>
> There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law, it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities; it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration; it operates wherever discretion is given for some public purpose, for example, where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.
>
> For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question, which has to be asked, is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere.

38. I n **Padfield v. Minister of Agriculture, Fishery of Food** a landmark decision has been delivered in the area of administrative law. The Minister had refused to appoint a committee to investigate the complaint made by the members of the Milk Marketing Board that majority of the Board had fixed milk prices in a way that was unduly unfavourable to the complainants. The Minister's decision was founded on the reason that it would be politically embarrassing for him if he decided not to implement the committee's decision. While rejecting the theory of absolute discretion, Lord Reid observed:

> Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the Court.

39. While considering the above quoted observations of the House of Lords, in **Breen v. Amalgamated Engineering Union** Lord Denning MR observed:

> The discretion of a statutory body is never unfettered. It is a discretion, which is to be exercised according to law. That means at least this; the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations, which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by **Padfield v. Minister of Agriculture, Fisheries and Food**, which is a landmark in modern administrative law.

40. The theory of unfettered discretion was rejected being incompatible with the doctrine of equality. In **S.G. Jaisinghani v. Union of India** V. Ramaswamy, J, one among the Five Judge Bench of the Supreme Court observed as follows:

In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon the executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules, and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey – 'Law of the Constitution' – Tenth Edn., Introduction ex.). 'Law has reached its finest moments', stated Dougles, J. in **United States v. Wunderlick** (1951-342 US 98 : 96 Law Ed 113), "When it has freed man from the unlimited discretion of some ruler … where discretion is absolute, man has always suffered'. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of **John Wilkes** (1770 – 98 ER 327), means sound discretion guided by law. It must be governed by rule, not humour; it must not be arbitrary, vague and fanciful.

41. Rejection of the argument of 'absolute discretion' and immunity from judicial review is clearly discernible from the following observations made by the Apex Court in the landmark decision in **Shrilekha Vidyarthi v. State of U.P.**:

We have no doubt that the Constitution does not envisage or permit unfairness or reasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Art.14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

42. In **Om Prakash v. State of Madhya Pradesh,** a Full Bench of the Madhya Pradesh High Court observed as follows:

In cases where the appointing authority does not accept the recommendations of the selecting agency it is bound to record the reasons for its decision and place the same before the Court as and when called upon to do so.

43. In **Shankarsan Dash v. Union of India** a Constitution Bench of

the Supreme Court held that though the State is not under a legal duty to fill up any of the vacancies, it does not have the licence of acting in an arbitrary manner and the decision not to fill up the vacancies has to be taken in a bona fide manner and for appropriate reasons.

44. The above position of law is lending any amount of support to arrive at the conclusions regarding the unsustainability of the impugned order.

**Judicial Review:**

45. On the question of judicial review, I have no hesitation to hold that Article 14 of the Constitution of India applies to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would become unconstitutional. Therefore, the decision taken by the first respondent comes within the purview of the judicial review to test its validity on the touchstone of Article 14 of the Constitution of India. I therefore hold that the present writ petition is maintainable under Article 226 of the Constitution of India.

**Findings:**

46. The decision of the Government shall be free from arbitrariness and if the Court finds that such decision is based on extraneous reasons or it is otherwise mala fide, the Court can nullify such decision of the Government. The above trend of decisions rendered by the Supreme Court, the High Courts, Queen's Bench and the Appeal Cases of the United Kingdom, and the opinions of jurists convey that even though the Government is the appointing authority, if any recommendation for appointment is made after making a selection by following the procedure established under law, the Government cannot nullify the whole exercise of selection without good and valid reasons. In the present case, the Board is the appointing authority, subject to the approval of the

Government, therefore, the Government is expected to take more reasonable care in examining the decision of the Board while approving the name of a candidate and if the Government comes to a conclusion that the decision of the Board is not sustainable for sufficient and compelling reasons, it has to assign such reasons while nullifying such decision. The Government cannot nullify the decision by the stroke of a pen by claiming that it is free to nullify the decision without assigning any reasons. In the light of the foregoing discussion, the order of the first respondent dated 4-10-2004 not approving the proposal without assigning any reasons and directing the Institute to restart the selection process for the post of Vice-Chancellor is liable to be set aside for the following reasons:

1. There is no violation of Rule 23 of the Memorandum of Association and Rules of the Institute in the process of selection till the decision of the Board is communicated to the first respondent.

2. The Human Resource Ministry approved the proposal to appoint the petitioner as Vice-Chancellor of CIEFL on 2-1-2004.

3. No irregularity is pointed out in the procedure adopted for the appointment of the Vice-Chancellor, subsequent to the clarifications given to the queries raised by the Appointing Committee of the Cabinet (ACC).

4. The impugned order was passed at the level of Human Resource Ministry and it was not again placed before the ACC.

5. The initial proposal for a direction to advertise the post was dropped on the ground that the advertisement of the post is not contemplated under Rule 23 of the Rules of the Institute.

6. The Government has no unfettered discretion to nullify the decision without assigning any reasons.

7. The first respondent cannot nullify the decision on the ground that it is free to reject the same without assigning good and valid reasons.

8. Undue delay of 2 years was caused by the first respondent in passing the final orders.

**Result:**

26. In the result, the writ petition is allowed by setting aside the order of the first respondent dated 4-10-2004 with the following directions:

1. The file shall be circulated to the competent authority for its decision expeditiously. The competent authority is directed to pass appropriate orders after taking into consideration the entire material relating to the decision of the Board of the Institute proposing to appoint the petitioner as the Vice-Chancellor. If the competent authority is not inclined to approve the decision of the Board of the Institute, it shall pass appropriate orders by assigning good, valid and compelling reasons for not approving the decision of the Board, which is the appointing authority.

2. Since the post of the Vice-Chancellor is not a political assignment, the change of the Government shall not have any effect in the process of appointment of the Vice-Chancellor.

3. The first respondent shall obtain the final decision of the competent authority within a period of three months from the date of receipt of this order, keeping in view the above mentioned observations and directions.

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Dr. G.YETHIRAJULU, J

26th November, 2004

SKM/svs

**Note:**

L.R. copy be marked:

(By order)

svs

ASSISTANT REGISTRAR

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SECTION OFFICER

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